

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:08-CR-00134-RJC

USA

v.

JOSE AYALA-URBINA (21)

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ORDER

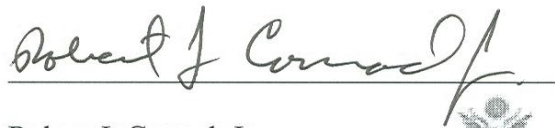
THIS MATTER is before the Court upon motion of the defendant pro se for appointment of new counsel to reconsider his eligibility for a reduction of sentence based on retroactive amendments to the United States Sentencing Guidelines regarding to drug offenses, (Doc. No. 1665), counsel's Notice of Ineligibility, (Doc. No. 1614), and related pleadings.

The defendant's plea to conspiracy to commit racketeering resulted in a total offense level of 27, a criminal history category of IV, and an advisory guideline range of 100-125 months. (Doc. No. 1629: Supplemental Presentence Report at 1). The Court imposed a sentence of 168 months based on the parties' binding plea agreement to a variance above the range, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). (Doc. No. 676: Plea Agreement at 1-3; Doc. No. 1180: Judgment at 2). Although some drug offense levels have been reduced by the 2014 amendments, USSG Supp. to Appx. C., Amend. 782 (2014), the total offense level and guideline range remain the same in the defendant's case. (Doc. No. 1629: Supplemental Presentence Report at 2; Doc. No. 1614: Notice of Ineligibility at 1). Accordingly, the defendant is not eligible for a sentence reduction. United States v. Munn, 595 F.3d 183, 187 (4th Cir. 2010); USSG §1B1.10 comment. (n.1(A)(ii)) (defendant not eligible for reduction where another guideline provision prevents lowering of guideline range).

IT IS, THEREFORE, ORDERED that the defendant's motion for the appointment of new counsel, (Doc. No. 1665), is **DENIED**.

The Clerk is directed to certify copies of this order to the defendant, the Community Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: November 14, 2016

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

